

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY)	M.D.L. No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIV. ACTION NO. 01-12257-PBS
)	

**AFFIDAVIT OF KATHERINE KINSELLA IN SUPPORT OF PLAINTIFFS'
RENEWED MOTION FOR APPROVAL OF THE FORM AND MANNER OF
NOTICE TO CLASS MEMBERS**

I, Katherine Kinsella, being duly sworn, hereby declare as follows:

1. I am President of Kinsella/Novak Communications, Ltd. ("KNC"), an advertising and notification consulting firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs to reach unidentified putative class members primarily in consumer and mass tort litigation. My business address is 2120 L Street, NW, Suite 205, Washington, D.C. 20037. My telephone number is (202) 686-4111.
2. I submit this affidavit as Exhibit 5 to the Declaration of Edward Notargiacomo In Support Of Plaintiffs' Renewed Motion For Approval Of The Form And Manner Of Notice To Class Members in response to the Court's comments concerning the Notice Plan made in the hearing held June 26, 2006, in connection with *In Re: Pharmaceutical Industry Average Wholesale Price Litigation* pending in the United States District Court, District of Massachusetts.
3. This affidavit is based upon my personal knowledge and upon information provided by Plaintiff's Counsel, my associates and staff. The information is of a type reasonably relied upon in the fields of advertising, media and communications.

Changes to the Notice Plan

4. KNC reconfigured the print media selections for the Notice Plan to (a) ensure that adequate reach of the target audiences, Medicare Beneficiaries and Adults 18+ (Heirs), would accumulate by October 22, 2006 providing time to opt-out of the lawsuits before a November 6, 2006 trial, and (b) to take into consideration the Court's comments.
5. The current Notice Plan includes the same publications as the Notice Plan filed June 21, 2006 with the addition of 2 insertions in both *Newsweek* and *US News & World*

Report, and one insertion in *Sports Illustrated*. These types of publications were included at the request of the Court.

6. The Court suggested the use of newspapers in the Notice Plan. Newspapers were not included in the previous Notice Plans because they are not a cost-effective way to achieve the reach and frequency goals in this case, as explained below.
7. To determine the cost effectiveness of media options/plans, the cost-per-thousand people reached ("CPM") is calculated. *Using MRIs 2005 Doublebase*¹ Study the following CPM estimates were calculated:
 - The CPM of the top circulating daily newspapers in the top 50 Metropolitan Statistical Areas² to reach Adults 18+ (Heirs) is \$12.41.
 - The CPM of the selected consumer publications in the Notice Plan (*Jet*, *National Geographic*, *Newsweek*, *Parade*, *People*, *Reader's Digest*, *Sports Illustrated*, *USA Weekend* and *US News & World Report*) to reach Adults 18+ (Heirs) ranges from \$2.37-\$6.03.
 - These results show that it is between two to 5.2 times more expensive to place the Publication Notice in a daily newspapers than in the selected publications, in order to accumulate the same number of impressions (the number of times the publication is viewed) against the Adults 18+ audience.

These calculations support the use of the selected media and not newspapers.

8. The ad size for *Selecciones* was increased to a full-page spread in order to accommodate the additional text requested by the Court when translated into Spanish. This is because Spanish translations are up to 25% longer than the English texts.

Notice Plan Reach

9. The estimated accumulated reaches of the previous Notice Plan and the current Notice Plan are similar.

(a.) Current Notice Plan

- 73.0% of Medicare Beneficiaries are reached with an average frequency of 2.0 times³.

¹ MRI produces an annual Doublebase, a study of 50,000+ adults consisting of two full years of data. The Mediamark sample consists of 26,000+ respondents. Fieldwork is done in two waves per year, each lasting six months and consisting of 13,000 interviews. At the end of the interview, the fieldworker presents a self-administered questionnaire that measures approximately 500 product/service categories, 6,000 brands, and various lifestyle activities. Resulting data is weighted to reflect the probabilities of selection inherent in the sample design and then balanced so that major study demographics match the most recent independent estimates.

² Metropolitan Statistical Areas refers to the Government designation of geographic areas with a significant population nucleus along with adjacent communities that have a high degree of economic and social integration with that nucleus.

³ The current Notice Plan also reaches 71.8% of Male Medicare Beneficiaries with a 2.0 frequency.

- 71.8% of Adults 18+ (Heirs) are reached with an average frequency of 2.1 times.

(b.) Previous Notice Plan

- 73.6% of Medicare Beneficiaries are reached with an average frequency of 1.9 times.
- 71.6% of Adults 18+ (Heirs) are reached with an average frequency of 1.9 times.

10. KNC also calculated the combined reach of the direct mail notice and the paid media notice against Medicare Beneficiaries and Male Medicare Beneficiaries using the ADPlus⁴ software program from Telmar⁵ that combines different media such as Television, Radio, Internet and Direct Mail, to estimate an overall reach of the paid media program.

11. The following estimates the combined reach of the direct mail notice and the paid media notice if 50% of the Medicare Beneficiary recipients were reached through direct mail notice and if 75% of the Medicare Beneficiary recipients were reached through direct mail notice:

(a.) 50% Direct Mail in combination with the Published Notice:

- An estimated 86.5% of Medicare Beneficiaries are reached with an estimated average frequency of 2.3 times.
- An estimated 85.9% of Male Medicare Beneficiaries are reached with an estimated average frequency of 2.3 times.

(b.) 75% Direct Mail in combination with the Published Notice:

- An estimated 93.3% of Medicare Beneficiaries are reached with an estimated average frequency of 2.4 times.
- An estimated 93.0% of Male Medicare Beneficiaries are reached with an estimated average frequency of 2.4 times.

⁴ ADPlus is computer software designed to calculate the estimated reach and frequency of multimedia programs for 16 types of media.

⁵ Telmar is the world's leading supplier of computer based advertising media information services for planning and analyzing media.


Content of the Notice

12. Plaintiff and Defendants have agreed to the text of all Published and Long Form Notices. Language with respect to the Defendants' defenses was added, in addition to the following statement:

The Court is not suggesting, requesting, or requiring that Medicare Part B Beneficiaries who were not billed by their doctors, or who were billed but did not pay, should pay their doctors now or that they are obligated to do so under the Medicare statute.

13. The availability of the Long Form Notice in Spanish is now detailed at the beginning of the Medicare Beneficiaries Long Form. It is also highlighted at the bottom of the Medicare Beneficiaries Publication Notice next to the toll-free number.
14. In checking with several publications to see if there were Spanish-only speakers reading their publications, the publishers of *National Geographic* and *Reader's Digest* have assured us that they believe readers of their English language publications are English-speaking and not Spanish-only speakers. They believe that it is highly doubtful that anyone would buy or subscribe to their English publications if they couldn't read the language. Therefore we made a reference to Spanish assistance with the toll-free number, if somehow a Spanish-only speaker were to see the ad in an English-only publication.
15. The headlines in both the Publication and Long Form Notices for Medicare Beneficiaries has been redesigned to include the names of the generic and branded drugs.
16. The two trade publications in the Notice Plan, *National Underwriter* and *HR Magazine*, continue to be the best publications to reach Third Party-Payers ("TPP"). *National Underwriter* has an estimated readership of 85,333 and *HR Magazine* has an estimated readership of 547,478. Since trade and professional magazines are narrowly focused on specific professions or industries, using business or general circulation newspapers would not be an effective way of reaching the TPP target.

I declare under penalty of perjury that the foregoing is true and correct. If called as a witness, I could and would competently testify thereto.


Katherine Kinsella
Katherine Kinsella

June 30, 2006
Date

SUBSCRIBED and SWORN before me on the 30th day of June 2006.

Debra L. Vaughan
Notary Public In and For the District of Columbia

Debra L. Vaughan
Notary Public District of Columbia
My Commission Expires April 14, 2008